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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

FREDDIE G., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	A114743 (Alameda County Super. Ct. No. OJ-05002658)

Freddie G. challenges an order of the Alameda County Superior Court, Juvenile Division, which set a hearing under Welfare & Institutions Code section 366.26[1] to select a permanent plan for Emily W. (born November 2005). As discussed below, we deny his petition on the merits.[2]

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise specified. References to rules are to the California Rules of Court.

[2] Section 366.26, subdivision (*l*)(1)(A), bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing for selection and implementation of a permanent plan. The statute also encourages the appellate court to determine all such writ petitions on their merits, as we do here. (§ 366.26, subd. (*l*)(4)(B).)

Background

The Alameda County Social Services Agency (Agency) removed Emily from the custody of T. W. (Mother) not long after Emily's birth, placing her in emergency foster care. Soon afterward, on November 14, 2005, the Agency filed a petition under section 300, subdivisions (b) and (j), to establish dependency jurisdiction. The petition was prompted by expressed concerns of "multiple community service providers" that Mother's mental health and developmental delays interfered with her ability to provide adequate care. Mother had had her parental rights terminated as to her two other children due to her mental condition and history of homelessness or unstable housing. While Mother had finally obtained stable housing—a room in a " 'supportive living' " facility—the facility did not permit minors to reside there.

The petition named Freddie G. (Father) as Emily's alleged father. Father had a room in the same facility where Mother resided.

On December 8, 2005, the court sustained jurisdiction as to Mother, denied her reunification services under section 361.5, subdivision (b)(11), and continued Emily in out-of-home care.[3] One week later, the court ordered paternity testing for Father, to be paid by the Agency. Father sought such testing because, while he believed he might be Emily's biological father, he also believed he might not be. Absent confirmation by paternity testing, Father "refuse[d] to hold [Emily] out as his own." On January 11, 2006, the court ruled that Father was not entitled to receive services based on his status as alleged father.

In mid-February 2006, after receiving test results indicating paternity, Father filed a modification petition under section 388. He sought to elevate his status from alleged father to presumed father, and sought services to obtain custody of Emily. On March 9, 2006, the court elevated Father to biological father status—but not presumed father status—and granted his request for services.

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[3] In January 2006, the court approved Emily's placement with her maternal grandmother, who had previously adopted one of Emily's half-siblings.

On July 12, 2006, the court held a contested six-month review hearing, and at that time terminated services for Father and set the matter for a hearing under section 366.26. This petition followed. (§ 366.26, subd. (*l*); rule 38.1.)

Discussion

If a child is not returned to his or his parent's custody at the six-month review hearing, and that child was under three years of age at the time of his or her initial removal, the court has two options. It "may schedule a hearing pursuant to Section 366.26" if it finds "by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e).) On the other hand, it must continue the matter to the 12-month permanency hearing if it finds either that there is a "substantial probability that the child . . . may be returned to his or her parent . . . within six months or that reasonable services have not been provided." (*Ibid.*)

Here the juvenile court made the finding, quoted above, which is necessary to set a section 366.26 hearing at the six-month review hearing. In addition, it found there was clear and convincing evidence that the Agency had provided or offered reasonable services to Father.

Father contends there was no substantial evidence to support the finding that the Agency provided him with reasonable services, and thus it was error not to continue his services to a 12-month permanency hearing.

In reviewing the challenged finding, we examine the record in the light most favorable to the juvenile court's order, to determine whether there is substantial evidence from which a reasonable trier of fact could have made the finding under the clear and convincing evidence standard. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) We construe all reasonable inferences in favor of a finding regarding the adequacy of an agency's reunification plan and the reasonableness of its efforts. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46.) We likewise resolve conflicts in favor of such a finding and do not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

Services may be deemed reasonable when the case plan has identified the problems leading to the loss of custody, the Agency has offered services designed to remedy those problems, has maintained reasonable contact with the parent, and has made reasonable efforts to assist the parent in areas in which compliance has proven to be difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.)

Here, Father was not the custodial parent from whom the Agency initially removed Emily. He requested custody of Emily over two months after her removal, as a noncustodial biological father. In ordering services for him, the juvenile court exercised its discretionary authority to "order services for . . . the biological father, if [it] determines that the services will *benefit the child*." (§ 361.5, subd. (a), italics added.) Thus the initial consideration, as framed above, is not so much whether Father's case plan identified the problems leading to Emily's removal, but more precisely whether it identified the problems that, if remedied through services, would "benefit the child" such that she could be placed in Father's care and custody without detriment to her safety, protection, or physical or emotional well-being. (Cf. § 361.2, subd. (a); see also *In re T. R.* (2005) 132 Cal.App.4th 1202, 1209 (a noncustodial presumed father is entitled to custody absent a finding of such detriment).)

Father's court ordered case plan set out the following objectives: he was to maintain a relationship with Emily by following the conditions of his visitation; express anger appropriately and not act negatively on impulse; refrain from behaving in a manner that is verbally, emotionally, physically, or sexually abusive or threatening; accept responsibility for his actions; obtain and maintain suitable housing for himself and Emily; comply with medical or psychological treatment; demonstrate age appropriate behavior with Emily; demonstrate an ability to live free from drug dependency by complying with all required drug tests; and comply with all court orders. To achieve these objectives, Father's case plan called for him to participate in a domestic violence program, parenting education, general counseling, a psychological evaluation, and drug testing.

The amended allegations of the petition, which the juvenile court ultimately sustained as the basis for its jurisdiction, provide support for the requirement that Father

participate in a domestic violence program. Among other things, these allegations state that Father "had an incident of domestic violence with his late wife" in 1998, had been convicted in 1999 for a public disturbance in violation of Penal Code section 415, subdivision (2), and in 2005 had been arrested for "engaging in a physical altercation with [Mother] while she was pregnant with the minor." The sustained allegations also provide support for the requirement that Father obtain and maintain suitable housing, because they state that the facility where Father currently lived did not permit minors. Information that the Agency otherwise gathered regarding Father's history and circumstances provide support for the parenting class requirement. Father was, for example, in his fifties and while he had reported having two adult children, his known history indicated he had not cared for an infant minor in recent years. The case worker reported that Father appeared to have "minimal parenting skills." The information gathered by the Agency further provides support for the requirement that Father complete a psychological evaluation and general counseling. After his initial interviews, the case worker reported that Father was slow and disorganized in his speech and frequently repeated himself. While he denied having "any mental health issues"—stating that his placement in the supportive living facility was based on a past history of seizures—he also declined to provide the consent forms that would have enabled the case worker to speak with his psychiatrist and other providers, in order to assess his mental health condition and gauge his ability to care for Emily.[4]

With regard to the Agency's efforts in assisting Father with his case plan, its reports indicate that it had devised Father's case plan by early December 2005, and had at that time given him referrals for a domestic violence program, parenting classes, individual counseling, and a psychological evaluation. Father declined to participate in services until the paternity test results confirmed he was Emily's biological father. The case worker who assumed responsibility for the case in January 2006 accordingly

[4] Finally, we note that, while there is little support in the record for the drug testing requirement, the Agency never actually required Father to submit to such testing.

renewed these referrals, providing Father with contact information on the domestic violence program on March 1, 2006, May 12, 2006, and June 12, 2006. She provided Father with contact information on his individual counseling referral on February 3, 2006, May 12, 2006, and June 12, 2006. On February 14, 2006, she gave Father contact information for parenting classes. After Father asked to take parenting classes with another provider, the case worker made a number of contacts with that provider in an attempt to secure approval. These attempts proved to be unsuccessful, and she gave Father an additional list of parenting class referrals on April 21, 2006. Father did participate in a psychological evaluation, conducted in late February 2006, but when the results of this evaluation proved to be inadequate, the court ordered a second evaluation by another provider. The case worker provided Father with contact information for this second evaluation on March 9, 2006, and again on May 12, 2006.

The Agency reports show further that the case worker met with Father on February 3, 2006, April 21, 2006, and June 12, 2006, and had telephone contact with him on six other dates during the period between late February and late May 2006. Finally, the case worker stated that she provided Father with bus passes in March, April, and June 2006, to assist him in meeting his case plan requirements.

The record thus outlined establishes, in our view, that Father's case plan appropriately identified those problems the resolution of which would most "benefit the child" if she were placed in his custody. Additionally, it shows that the Agency offered or provided services designed to remedy those problems, maintained reasonable contact with Father, and made reasonable efforts to assist him in complying with his case plan requirements. (*In re Riva M., supra,* 235 Cal.App.3d 403, 414.) In other words, the record provides ample support for the determination that the Agency offered or provided Father with reasonable services.

Father contends the Agency was or should have been aware that he suffered from some mental impairment requiring more specialized services, yet it unreasonably failed to tailor his plan to take this impairment into account. For example, he points to the Agency reports prepared in late November 2005 and early March 2006, in which case workers

noted that he "present[ed] with a stutter and at times [could] be difficult to understand," that "his speech [was] slow and disorganized [and he] frequently repeat[ed] himself," and that he "sometimes seem[ed] confused about information" the Agency gave to him. He also points to the first psychological evaluation, attached to the March 2006 report, and claims that, even though the Agency deemed it inadequate, it nonetheless indicated he had at least "some mental impairment."

Father further argues that his services were deficient, in effect, because he had a very limited period within which to receive them,[5] yet the Agency was dilatory in getting him started on his case plan. Specifically, it failed to ensure timely completion of either a paternity test or a psychological evaluation, the former being necessary for him to receive services as a biological father and the latter being essential for a case plan properly tailored to his special needs.

We find these objections to be unpersuasive. In the first place, the record shows that the Agency made reasonable efforts to assist Father in obtaining a paternity test, beginning at the time of the detention hearing in mid-November 2005. More importantly, it offered Father a case plan and referrals well before it received the results of such testing, yet Father himself declined to participate before receiving those results. The Agency also made reasonable efforts to obtain a psychological evaluation as soon as possible. It initially gave Father a referral on December 5, 2005. Although the Agency deemed the results of the first evaluation to be inadequate, it appears that Father at least contributed to that inadequacy by refusing to stay for the entire period of time that the psychologist requested in order to complete testing. The Agency promptly sought approval for a second evaluation and made reasonable attempts to assist Father in

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[5] When a minor, as here, is under three years of age at the time of initial removal, a parent is generally entitled to six months of services. (§ 361.5, subd. (a)(2).) The six-month period begins to run from either the date of the jurisdictional hearing or the date 60 days following initial removal, whichever is earlier. (See *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1156-1157.)

completing that evaluation. Yet, Father once again contributed to the delay by failing to appear promptly for all the necessary testing sessions.

It is true that the Agency was aware, by late November 2005, that Father possibly had "mental health needs." This possibility had been suggested both by Father's placement in a supportive living facility and by his demonstrated speech and behavior during initial interviews. However, the record also shows that the case worker promptly attempted to obtain a diagnosis of his mental health and cognitive abilities, in order to assess his needs more accurately. Father, however, denied having any "mental health issues" and refused to cooperate, either by providing consent forms so that the case worker could speak with his psychiatrist and other providers, or by pursuing promptly his first referral for a psychological evaluation, which the Agency provided in early December 2005. Under these circumstances, we do not think Father is in a good position to fault the Agency for failing to provide some hypothetical modification to his case plan based on speculation rather than a diagnosis.[6] (Cf. *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

In sum, we conclude that the record, viewed in the light most favorable to the court's order, provided substantial evidence on which a reasonable judge could find, based on the clear and convincing evidence standard, that the Agency offered or provided reasonable services to Father.

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[6] *In re Victoria M.* (1989) 207 Cal.App.3d 1317, cited by Father, is readily distinguishable. In that case the social services agency had "access from the onset to a psychological evaluation" showing the nature of mother's mental impairment. (*Id.* at p. 1329.)

Disposition

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) This decision is final in this court immediately. (Rule 24(b)(3).)

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Swager, J.

We concur:

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Marchiano, P. J.

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Margulies, J.